1945. K File No. O.B.C.S.Rs/45.

Legal DEPARTMENT

A BRANCH

Subject:—

Opinions under the Bombay

Civil Services Rules.

(P.A. (E))

File No. O.B.C.S.Rs/45

Std. Sectt. Slip 24 B e.

406-A

C O N T E N T S

Legal Department Vol. No. O.B.C.S.Rs./1945

Sr. No.	Compilation No.	Subject	Pages.
	O.B.C.S.Rs./1945	Opinions under the Bombay Civil Services Rules.	
1.	R.I.No.7443/ 29-8-45 30 O.No.7917/24-10-45	Question whether a lien on a permanent post of a Govt. servant can be kept if he voluntarily resign his post unconditionally with a view to join another office.	1 - 3
2	1917 dl- 24-10-45	Rules 18A, 18B, 19,20 A of the Bombay Civil Services Rules.	5

Sd/-

17-11-55.

S.A.K.
18-4

File No. G.B.C.S.Rs/45

Legal Department,
A Branch.

Submitted.

The File G.B.C.S.Rs /45 has been examined with a view to replace, the important notes etc. on bad quality papers, an good quality papers and the following suggestions are put up for approval:-

I. The following pages may be preserved

(a) as they are - pp. 7. and 15.

(b) after getting them retyped- page 1.

II. The following pages may be removed and filed seperately, in a provisional file to be destroyed subsequently as being pages of unimportant notes. pp. 3,5, 9,11,and 13

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12-7

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16-7-43

S.A.K.

20-4

Submitted.

2. It appears that one Mr. I.K.Pahelwan, a permanent clerk in the office of the Inspector General of Registration, Bombay Province, Poona, applied for the post of a temporary nature in the Central ~~Kxxiiiiii~~ Excise Department and was appointed in that post on 7th July 1944. Mr. Pahelwan's application was forwarded by the I.G.R. But before forwadding the said application the I.G.R. asked Mr. Pahelwan to sign a declaration as under :-

"I consider the post and terms offered by the Salt and Central Excise Deptt. bett er for my prospects than the post I held in the Registration Deptt. Therefore, if I am selected by the Salt Deptt., I have no objection to my lien being removed from the Registration Deptt.

N.B.- In this case the consent is gi en free and unconditional (without prejudice to my ri ht to appeal to Govt. in the Matter).

After Mr, Pahelwan was appointed in his new post, the I.G.R. filed up substantively Mr. Pahelwan's post in I.G.R's office following the said declaration signed by Mr. Pahelwan, On 10th November 1944, Mr. Pahelwan, relying on rule 20-A(a) of the Bombay Civil Services Rules, requested the I.G.R. to revive his lien on his permnaent post in th I.G.R.'s office as, being a temporary hand in the Central Excise, he would be without any permanent footing in case his services were not required in the Excise Deptt. The I.G.R.rejected his application. Thereafter the Collector of Central Excise, Bomba y requested the I.G.R. to retain Mr. Pahelwan's lien on his permanent post in the I.G.R's office until Mr. Pahelwan was confirmed in the Central E xcise Deptt. The I.G.R. did not accept this proposal but suggested to the Collector that if Mr. Pahelwan would accept to retain his ~~kxx~~ lien on a lower grade post in the same Deptt, he might reconsider the case.

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On 12th January 1945 Mr. Pahelwan again submitted an application for the retention of his lien to the I.G.R. who rejected the same on 6th March 1945. Mr. Pahelwan has now submitted the petition at pp. 19-20 ante to secy. R.D. presumably by way of a peal with a request that his lien may be retained on the permanent post held substantively by him in the I.G.R's office. The collector of Cent ral Excise, Bombay through whom Mr. Pahelwan has submitted the above petition, has observed that Mr. Pahelwan request seems reasonable. The present I.G.R. is of the opinion that Mr. Pahelwan's appointment was directly made by the Central Excise Deptt, and as no order of his appointment was received in the I.G.R's office, the I.G.R. has no official knowledge thereof. He has further observed that Mr. Pahelwan's request for relief was a request for termination of his services in I.G.R's office, otherwise hw would have requested the Central Excise Deptt. to arrange for a regular deputation. The Financial Adviser has stated in his note at pp. 44-45 ante that the present case cannot be treated as one of transfer on deputation under proper authority which alone would have entitled Mr. Pahelwan to the protection of the lien rules, It is stated in P. and S.D. office note at pp. 47-48 ante that the undertaking given by Mr. Pahelwan was a conditional resignation meant to provide that his services were to terminate if he joined the Excise Deptt. - Particularly so as Mr. Pahelwan did not raised any protest in time against the termination of his services in the I.G.R's office , The C.S. agrees with the above view saying that Mr. Pahelwan offered in fact a conditional resignation to become effective if he was sele cted for the Central Excise Deptt., and that as he was so selected his co nection with his former post must be considered to have terminated. The R.L.A. is requested to advise in the matter.

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Office of the R.L.A.

The view taken by the Chief Secretary at page 49 ante is correct.

Rules 18A, 18B, 19, 20 and 20A of the Bombay Civil Services Rules have no application to the present case.

Sd/-

P.N.M.
23-10-45

Remembrancer of Legal Affairs.

U.R. to P.&.S.D.No.7917, dated the 24th October 1945.

Sd/-

23-10

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SM/24/5

DHS/22/5